IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1044 OF 2006

1. Jafaralli Abdul Razak Kacchi
and anr. .....Applicants.

V/s

State of Maharashtra .....Respondents

Mr. R.R. Bhonsale with Mr. S.A. Ingawale for the applicants.
Mr. R.Y. Mirza, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 29th March, 2006

P.C.:

1. Heard the learned Counsel for the applicants and the learned Counsel for the State.

2. The applicants apprehend arrest in respect of C.R. No. 2 of 2006 registered with the Rajarampuri Police Station for the offence punishable under sections 420, 406 read with section 34 of the Indian Penal Code.

3. A private complaint was filed by the complainant in which the directions were given by the Magistrate to investigate the matter under section 156(3) of the Criminal Procedure Code.

4. It is submitted by the learned Counsel appearing

for the applicants that the order of investigation under section 156(3) was obtained after tendering fabricated partnership deed and the Court was misled to believe that the complainant did not have any share in the profits whereas the liability was to be shared by the complainant and his wife and there was no liability cast upon the applicants.

5. On the last occasion, the learned Counsel for the applicants was directed to file a certified xerox copy of the partnership deed. A perusal of the said deed discloses that clause 11 has been apparently tampered in the complaint which is filed by the complainant. A certified copy of the deed discloses that the ratio of sharing profit between the complainant and the present applicant was 35% each and 5% profit was to be given to the wife of the complainant and the present applicants had 20% share each in the profit and the losses were to be shared by the complainant and his wife alone. This clearly indicates that a wrong impression was created by suppressing material facts. It is an admitted position that the partnership deed was executed by the complainant and his wife with the present applicants and the case of the applicants is that they had invested an amount of Rs 9 lakhs whereas the complainant had invested Rs 2,40,000/- and since

there was dispute between the parties, the complainant and his wife were asked to retire.

6. Looking at the facts and circumstances of the case, in my view, at the highest, it could be said to be a civil dispute regarding the settlement of accounts on the dissolution of partnership. It is not alleged that the partnership deed was signed under coercion. In my view, therefore, prima facie case is made out for grant of an anticipatory bail.

7. The applicants in the event of their arrest in connection with C.R. No.2 of 2006 registered with the Rajarampuri Police Station be released on bail in the sum of Rs 10,000/- each with one or two sureties in the like amount each. The applicants shall report to Rajarampuri Police Station as and when called. It is open for the applicants to take suitable action against the complainant before the appropriate Court.

8. Application is accordingly disposed of.

9. C.C. expedited.

V.M. KANADE, J.